No. 15-684

# In the Supreme Court of the United States

STATE OF OHIO, PETITIONER

*v.*

SIERRA CLUB, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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## QUESTION PRESENTED

Whether, under the Clean Air Act, before the Environmental Protection Agency can approve the State's request for redesignation of a nonattainment area to attainment status under 42 U.S.C. 7407(d)(3)(E), it must approve a state implementation plan addressing "reasonably available control measures" and "reasonably available control technology" under 42 U.S.C. 7502(c)(1), even if no additional measures are necessary to demonstrate attainment of the relevant National Ambient Air Quality Standard.

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## OPINIONS BELOW

The amended opinion of the court of appeals (Pet. App. 3a-29a) is reported at 793 F.3d 656. The original opinion of the court of appeals (Pet. App. 30a-57a) is reported at 781 F.3d 299. The final rule of the United States Environmental Protection Agency (Pet. App. 58a-136a) is published at 76 Fed. Reg. 80,253.

## JURISDICTION

The judgment of the court of appeals was entered on July 14, 2015. Petitions for rehearing were denied on September 3, 2015 (Pet. App. 1a-2a). The petition for a writ of certiorari was filed on November 23, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

This case involves a challenge to a decision by the Environmental Protection Agency (EPA) to approve petitioner's request to redesignate a portion of the

Cincinnati-Hamilton Area from nonattainment to attainment status under the Clean Air Act, 42 U.S.C. 7401 *et seq*. The court of appeals vacated that decision on the ground that EPA had not approved a state implementation plan addressing reasonably available control measures (RACM) or reasonably available control technology (RACT). Pet. App. 24a-29a.

1. a. Under the Clean Air Act, EPA establishes National Ambient Air Quality Standards (NAAQS) to protect public health with an adequate margin of safety against various types of pollutants. 42 U.S.C. 7409. Once a NAAQS is established for a given pollutant, EPA must designate areas as either meeting the standard (attainment) or not meeting the standard (nonattainment) for that pollutant. 42 U.S.C. 7407(d). States with areas designated as nonattainment are required to submit implementation plans setting forth the manner in which they will proceed to satisfy the NAAQS in those areas. 42 U.S.C. 7407, 7501-7515.

The Clean Air Act establishes various requirements applicable to such implementation plans. See, *e.g.*, 42 U.S. 7501-7509a, 7513-7513b. One such requirement is that nonattainment plan provisions

> *shall provide for the implementation of all reasonably available control measures [RACM] as expeditiously as practicable* (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of *reasonably available control technology [RACT]*) and shall provide for attainment of the national primary ambient air quality standards.

42 U.S.C. 7502(c)(1) (emphasis added).

In 1990, when Congress enacted the current version of Section 7502(c)(1), EPA had already interpret-

ed the term RACM to encompass only those measures "necessary to assure reasonable further progress and attainment by the required date." 44 Fed. Reg. 20,375 (Apr. 4, 1979); see 40 C.F.R. 51.1(*o*) (1972) (defining RACT in similar terms); see also 42 U.S.C. 7502(b)(2) (1988) (requiring RACM in the precursor to current Section 7502(c)(1)). As part of its 1990 amendments to the Clean Air Act, Congress enacted a "[g]eneral savings clause" stating that "[e]ach regulation, standard, rule, notice, order and guidance promulgated or issued by [EPA] under this chapter, as in effect [before the 1990 Amendments], shall remain in effect according to its terms." 42 U.S.C. 7415.

Since 1990, EPA has issued additional nationally applicable regulations confirming that a state implementation plan is required to include RACM and RACT only when such measures are necessary to bring an area into attainment with respect to the applicable air quality standard, or to advance the area's attainment by a year or more. See, *e.g.*, 40 C.F.R. 51.1010; 40 C.F.R. 51.912(d); 57 Fed. Reg. 13,560 (Apr. 16, 1992); see also 40 C.F.R. 51.1004(c) (suspending a State's obligation to submit to EPA for approval "attainment demonstrations and associated reasonably available control measures," as long as the area continues to attain the relevant air quality standard until redesignation); 40 C.F.R. 51.918 (same). The D.C. Circuit and Fifth Circuit have upheld EPA's interpretation of RACM and RACT to encompass only those measures necessary to advance attainment. See *Natural Res. Def. Council* v. *EPA*, 571 F.3d 1245, 1251-1253 (D.C. Cir. 2009) (per curiam); *Sierra Club* v. *EPA*, 314 F.3d 735, 743-744 (5th Cir. 2002); *Sierra Club* v. *EPA*, 294 F.3d 155, 162 (D.C. Cir. 2002).

b. The Clean Air Act authorizes EPA to revise its designation of an area of a State from nonattainment to attainment status if various statutory criteria are satisfied. See 42 U.S.C. 7407(d)(3)(E). *Inter alia*, (1) the area must have "attained the [NAAQS]"; (2) EPA must have "fully approved the *applicable implementation plan* for the area under [42 U.S.C. 7410(k)]"; and (3) "the improvement in air quality [must be] due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions." 42 U.S.C. 7407(d)(3)(E)(i)-(iii) (emphasis added). EPA has concluded that, in circumstances where a particular area is already attaining the NAAQS, Section 7407(d)(3)(E)(ii)'s reference to an "applicable implementation plan" does not encompass measures that the Act requires in order to promote attainment by current nonattainment areas. *Sierra Club* v. *EPA*, 375 F.3d 537, 540-542 (7th Cir. 2004) (Easterbrook, J.) (upholding EPA's interpretation under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)); see 40 C.F.R. 51.1004(c); 40 C.F.R. 51.918.

2. In 2005, EPA designated the Cincinnati Area as nonattainment for the 1997 annual fine particulate matter NAAQS. 70 Fed. Reg. 944, 995 (Jan. 5, 2005). In 2010, petitioner submitted a request to EPA to redesignate the Ohio portion of the Area from nonattainment to attainment for that standard, and to approve a revision of its state implementation plan setting forth how Ohio would maintain compliance with

the NAAQS. Pet. App. 60a-61a; see 76 Fed Reg. 64,826 (Oct. 19, 2011).[1]

In 2011, EPA granted petitioner's request. First, EPA found that the Cincinnati Area's air quality had attained the 1997 annual fine particulate matter air quality standard. 76 Fed. Reg. 60,373 (Sept. 29, 2011). Next, EPA proposed to approve Ohio's redesignation request on the basis that all of the redesignation criteria were met. 76 Fed. Reg. 64,880 (Oct. 19, 2011). EPA also published a direct final rule that would have approved the redesignation request, see *id.* at 64,827-64,834, but it withdrew that rule when it received adverse comments on the action.

As part of its analysis in support of the redesignation, EPA indicated that Section 7407(d)(3)(E)(ii)'s requirement that it had "fully approved the applicable implementation plan for the area" was satisfied in light of (1) Ohio's previously approved state implementation plans addressing the PM standards, and (2) EPA's approval of Ohio's 2005 base year emissions inventory for the Cincinnati Area. 76 Fed. Reg. at 64,829. EPA also made clear that it viewed Section 7502(c)(1)'s RACM requirement as inapplicable because EPA had concluded that attainment had been reached. *Id.* at 64,828 (citing 40 C.F.R. 51.1004(c)).

After notice and comment, EPA published a final rule redesignating the Ohio portion of the Cincinnati Area. 76 Fed. Reg. 80,253 (Dec. 23, 2011); Pet. App. 58a-91a. In redesignating the Cincinnati Area, EPA discussed a comment from respondent Sierra Club

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[1] Indiana and Kentucky submitted similar redesignation requests for their portions of the Area. 76 Fed. Reg. at 64,826; see 76 Fed. Reg. 65,458 (Oct. 21, 2011). Those redesignations are not directly at issue here.

that the redesignation could not be approved because petitioner's nonattainment plan did not contain RACT. See Pet. App. 64a-65a, 78a. EPA explained that it was not requiring RACT to be incorporated into the state implementation plan because

> EPA interprets RACT for $PM_{2.5}$ as linked to attainment needs of the area. If an area is attaining the $PM_{2.5}$ standard, it clearly does not need further measures to reach attainment. Therefore, under EPA's interpretation of the RACT requirement, as it applies to $PM_{2.5}$, Ohio and Indiana have satisfied the RACT requirement without need for further measures.

*Id.* at 78a.

As support for this analysis, EPA cited a 2008 agency memorandum explaining that "40 C.F.R. 51.1004(c) provides that a determination that an area has attained the $PM_{2.5}$ standard suspends the requirements to submit RACT and RACM requirements." Pet. App. 78a. EPA also cited 40 C.F.R. 51.1010, which provides that States must adopt RACM and RACT as "necessary to demonstrate attainment as expeditiously as practicable." Pet. App. 78a. EPA concluded that "the regulatory text" thus "defines RACT as included in RACM, and provides that it is required only insofar as it is necessary to advance attainment." *Id.* at 79a.

3. Respondent Sierra Club petitioned for review, challenging EPA's redesignation of the Cincinnati Area on various grounds. As relevant here, respondent argued that Section 7502(c)(1) requires States with nonattainment areas to incorporate RACT in their implementation plans for those areas as a precondition to redesignation under 42 U.S.C.

7407(d)(3)(E)(ii). Pet. App. 9a-10a. Petitioner and a group of Ohio industry entities intervened in support of EPA. *Id.* at 10a.

a. In March 2015, the court of appeals issued a decision granting in part and denying in part respondent's challenges to EPA's redesignation of the Area, and vacating the redesignations with respect to the Ohio and Indiana portions. Pet. App. 30a-57a. The court of appeals held that, under Section 7407(d)(3)(E)(ii), EPA was required to fully approve RACM/RACT provisions into the state implementation plan prior to redesignation. *Id.* at 52a-56a. The court of appeals noted the argument of intervenor Ohio Utilities Group that Ohio's plan in fact had included RACT, but the court declined to address that alternative justification for the redesignation since EPA had not relied on it in the final rule. *Id.* at 56a n.5.

The court of appeals relied almost exclusively on its prior decision in *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001). There, the court held that EPA was precluded from redesignating a nonattainment area because the State had adopted various ozone-specific RACT requirements set forth in 42 U.S.C. 7511a(b)(2) only as contingency measures to be activated if the area failed to maintain the standard. 265 F.3d at 428, 442. Section 7511a(b)(2) provides that a State "shall submit a revision to the applicable implementation plan to include provisions to require the implementation of [RACT] under [S]ection 7502(c)(1) with respect to [various identified source categories]." The court of appeals concluded that the provision at issue in this case, Section 7502(c)(1), is "functionally identical" to Section 7511a(b)(2) and unambiguously requires in-

corporation of RACM/RACT provisions into the state implementation plan prior to redesignation. Pet. App. 53a.

The court of appeals also rejected EPA's argument that Section 7407(d)(3)(E)(ii)'s reference to "applicable implementation plan" encompasses only those aspects of an implementation plan that are "necessary to achieve compliance" with the NAAQS, as opposed to "all statutory provisions imposed on nonattainment areas." Pet. App. 54a. In doing so, it "respectfully disagree[d] with the Seventh Circuit['s]" decision upholding EPA's interpretation of that provision. *Id.* at 54a-55a (citing *Sierra Club*, 375 F.3d at 540).

Although the court of appeals rejected EPA's argument that redesignation is proper even if the State's implementation plan does not incorporate RACM or RACT provisions, the court noted that "[i]t may be the case that we will defer, as our sister circuits have done, to a view that *individual* measures are not RACM/RACT if they do not meaningfully advance the date of attainment, * * * but we leave that question for another day." Pet. App. 56a n.5 (citing two of the D.C. Circuit and Fifth Circuit decisions noted at p. 3, *supra*). The court emphasized that "[w]e hold only that EPA cannot categorically exclude the Ohio and Indiana regions from the mandates of [Section] 7502(c)(1)." *Ibid.*

b. EPA, petitioner, and the Ohio Utilities Group each filed a petition for rehearing en banc and panel rehearing. In July 2015, the panel issued an amended opinion with two substantive edits. First, the panel modified its reasoning regarding the Sixth Circuit's discussion of the term "applicable" in the *Wall* decision. Compare Pet. App. 28a, with *id.* at 55a. The

court reaffirmed its earlier conclusion that the statutory provisions at issue in this case unambiguously require state implementation plans submitted in connection with redesignation requests to include RACM and RACT provisions. *Id.* at 26a, 28a.

Second, the panel removed the portion of its footnote suggesting that, in a subsequent case, it might "defer, as our sister circuits have done, to a view that individual measures are not RACM/RACT if they do not meaningfully advance the date of attainment." Compare Pet. App. 28a-29a n.5, with *id.* at 56a n.5.

c. EPA, petitioner, and the Ohio Utilities Group each filed a supplemental brief in support of the petitions for rehearing en banc. In September 2015, the court of appeals denied those petitions. Pet. App. 1a-2a.

**ARGUMENT**

The court of appeals construed the Clean Air Act to prohibit EPA from redesignating an area to attainment status, based on that area's actual attainment of the NAAQS, unless the State has adopted RACM and RACT provisions in its implementation plan. EPA agrees with petitioner that the court's decision is erroneous. The decision below conflicts with the Seventh Circuit's decision in *Sierra Club* v. *EPA*, 375 F.3d 537, 540-642 (2004), and it is in tension with EPA's longstanding view of the relationship between 42 U.S.C. 7407(d)(3)(E)(ii) and 7502(c)(1).

The court of appeals' error, however, does not appear to be of sufficient practical importance to warrant this Court's review. The precise impact that the court's decision will have in future cases is not clear, especially since the court did not expressly consider, much less reject, EPA's longstanding interpretation of

RACM and RACT to include only those measures necessary to achieve attainment. EPA has proceeded to implement the decision below on the understanding that, although the decision requires States to submit, for EPA's approval, RACM and RACT provisions as part of the applicable implementation plan, it does not require implementation of any actual control measures that are not necessary for the area to attain the NAAQS. See 80 Fed. Reg. 56,418 (Sept. 18, 2015). Under that interpretation of the decision below, further review is not warranted.

1. EPA approved petitioner's request to redesignate the Cincinnati Area to attainment status for the 1997 fine particulate matter standard, even though EPA had not approved a state implementation plan containing RACM and RACT provisions specifically addressing those standards. The court of appeals set aside that decision and rejected EPA's view that such provisions are not required by Sections 7407(d)(3)(E)(ii) and 7502(c)(1) when, as here, the area has already come into compliance with the NAAQS. Pet. App. 24a-29a. The court's decision was erroneous.

Section 7407(d)(3)(E)(ii) prohibits EPA from redesignating an area to attainment status unless EPA "has fully approved the applicable implementation plan for the area." The Clean Air Act does not define what constitutes the "applicable implementation plan" for purposes of Section 7407(d)(3)(E)(ii). EPA has long taken the position that, when a particular area is *already* attaining the NAAQS, its "applicable implementation plan" need not include the sorts of additional measures that the Act requires in order to promote attainment of the NAAQS by areas that are currently

in nonattainment status. See, *e.g.*, *Sierra Club*, 375 F.3d at 540-542; see also 40 C.F.R. 51.1004(c), 51.1010. EPA relied on that longstanding view of Section 7407(d)(3)(E)(ii) when it approved petitioner's redesignation request here. See Pet. App. 78a.

As the Seventh Circuit has correctly held, EPA's interpretation of Section 7407(d)(3)(E)(ii)'s phrase "applicable implementation plan" is reasonable and entitled to *Chevron* deference. See *Sierra Club*, 375 F.3d at 540-642. The obvious overarching purpose of the statutory scheme is to ensure the area's compliance with the NAAQS. When EPA concludes that a nonattainment area has attained the NAAQS (as required by Section 7407(d)(3)(E)(i)), and that the improvement in air quality is due to "permanent and enforceable reductions in emissions" (as required by Section 7407(d)(3)(E)(iii)), there is no reason to suppose that Congress would have wanted to force States to go beyond the NAAQS by imposing additional control measures. Because "the reason to take additional steps was to achieve an adequate reduction in [pollution], it would be odd to require [such steps] even when they turned out to be unnecessary." *Sierra Club*, 375 F.3d at 541. EPA therefore reasonably concluded that Section 7502(c)(1)'s RACM/RACT requirement is not part of the "applicable implementation plan" that EPA needed to approve in order to redesignate the Cincinnati Area to attainment status under Section 7407(d)(3)(E)(ii).

That conclusion is strengthened by EPA's settled interpretation of what measures qualify as RACM and RACT for purposes of Section 7502(c)(1). As explained above, EPA has long recognized that RACM and RACT encompass only those measures that are

necessary for a State to attain the NAAQS. See pp. 2-3, *supra* (citing authorities). Congress ratified that settled regulatory definition when it used those terms in Section 7502(c)(1) as part of the 1990 Clean Air Act Amendments. See p. 3, *supra*.

The logical and necessary consequence of that definition is that, when an area has attained the NAAQS, no additional measures qualifying as RACM or RACT exist for purposes of Section 7502(c)(1). Given the absence of any such measures, there is no reason to treat Section 7502(c)(1)'s RACM and RACT requirements as part of the "applicable implementation plan" for purposes of Section 7407(d)(3)(E)(ii), or to require state implementation plans to address RACM or RACT in any way. The court of appeals erred by failing to defer to EPA's reasonable interpretation of the relevant statutory provisions.

2. For the reasons set forth above, EPA agrees with petitioner that (1) the court below erred in setting aside EPA's redesignation of the Ohio Area, and (2) the court's decision conflicts with the Seventh Circuit's analysis of Section 7407(d)(3)(E)(ii) in *Sierra Club*. See Pet. 15-18, 24. If the Court grants the petition for a writ of certiorari, the government therefore will argue that the judgment of the court of appeals should be reversed. The practical significance of the court of appeals' error and the conflict in authority, however, does not appear to be sufficient to warrant the Court's review at this time. The ultimate impact that the court's decision will have on EPA's administration of the Clean Air Act is not yet clear, and the decision can and should be read narrowly to minimize its disruptive effect on EPA's settled interpretation of the RACM and RACT requirements.

a. The court of appeals' holding plainly bars EPA from approving a State's redesignation request unless the State has adopted, and EPA has approved, an implementation plan that contains RACM and RACT provisions. See Pet. App. 24a-29a. Here, the court set aside EPA's redesignation of the Cincinnati Area because petitioner's approved implementation plan contained no such provisions addressing the NAAQS at issue. *Ibid.* Under the court's decision, petitioner may renew its request for redesignation, based on a new implementation plan that contains such provisions.

The court of appeals did not, however, expressly address the validity of EPA's longstanding view, ratified by Congress as described above, that RACM and RACT encompass only those measures that are necessary to bring an area into attainment with respect to the applicable NAAQS, or to advance the area's attainment by a year or more. See pp. 2-3, *supra* (citing authorities). The panel's original opinion expressly reserved the possibility that, in a future case, the court might "defer, as our sister circuits have done, to a view that individual measures are not RACM/RACT if they do not meaningfully advance the date of attainment." Pet. App. 56a n.5 (citing cases and noting that "we leave that question for another day").

EPA's subsequent petition for rehearing en banc pointed out that, in applying the panel's decision, "the content of an additional RACM/RACT submission will be governed by the regulatory definition of RACM/RACT under 40 C.F.R. § 51.1010, which provides that RACM/RACT are those measures that are required to bring an area into attainment." EPA Pet. for Reh'g 14-15. EPA also noted that, "[b]ecause the

Area is attaining the NAAQS, the additional submissions will be empty sets by definition, and the result of the panel's decision is a purposeless administrative process." *Id.* at 15; see also EPA Supp. Mem. in Support of Pet. for Reh'g 8-9 (same). Although respondent Sierra Club filed a response to the original petition, it did not dispute EPA's interpretation of the panel decision or suggest that that the panel had overturned EPA's longstanding view that RACM and RACT encompass only those measures required to bring an area into attainment.

The panel's revised opinion deleted the portion of its original footnote indicating that the Sixth Circuit might ultimately defer to EPA's longstanding interpretation that individual measures qualify as RACM or RACT only if they are necessary to meaningfully advance the area's attainment. See Pet. App. 28a-29a n.5. But the revised opinion contained no new analysis rejecting that interpretation or indicating that EPA had misinterpreted the panel's holding or analysis. And the panel's change to the footnote eliminates any implication that the RACM/RACT provisions that are required to be included in the state implementation plan must expressly "identify *individual* control measures that qualify as RACM/RACT" in the circumstances presented here. *Id.* at 56a n.5.

The court of appeals' decision thus does not foreclose EPA from applying its longstanding interpretation of RACM and RACT when assessing any future redesignation requests, whether by petitioner or by any other State. While the court's decision makes clear that any such request must be based on a state implementation plan that contains RACM and RACT provisions, it does not prevent EPA from approving a

redesignation request when such provisions indicate that no additional measures that would qualify as RACM or RACT exist because the area is already attaining the NAAQS.

b. EPA has already begun to implement the court of appeals' decision along the lines set forth above. Most notably, EPA applied its interpretation of that decision in late 2015 when it redesignated the Tennessee portion of the Chattanooga Area to attainment status for the 1997 annual fine particulate matter air quality standard. See 80 Fed. Reg. 56,418 (Sept. 18, 2015); see also 80 Fed. Reg. 68,253 (Nov. 4, 2015).

In March 2015, EPA originally proposed to redesignate the Tennessee portion of the Chattanooga Area even though it had not approved RACM or RACT provisions as part of Tennessee's implementation plan. 80 Fed. Reg. at 56,419 (describing procedural history of rulemaking). After the original panel decision in this case, however, EPA issued a supplemental proposed rule for the redesignation of the Tennessee portion of the Chattanooga Area. *Id.* at 56,419-56,421. In response to the decision, EPA's supplemental rule proposed to approve a revision to Tennessee's plan that addressed RACM under 42 U.S.C. 7502(c)(1). *Ibid.* It also proposed to find that approval of that revision would satisfy Section 7407(d)(3)(E)(ii)'s requirement that it "fully approve[] the applicable [implementation plan]," in accordance with the court's decision in this case. 80 Fed. Reg. at 56,419 (brackets in original).

EPA's supplemental proposal explained that, because the Chattanooga Area had already attained the NAAQS, no emission reduction measures could advance the attainment date of the Area, and therefore

no emission controls constitute RACM under 42 U.S.C. 7502(c)(1). 80 Fed. Reg. at 56,420 (relying on EPA definition of RACM set forth at 40 C.F.R. 51.1010). EPA also indicated that the submission was approvable because Tennessee's submission substantively demonstrated that no additional control measures would have advanced the attainment date projected in that plan. 80 Fed. Reg. at 56,420-56,421. EPA received no comments on the proposal, and on November 4, 2015, the agency finalized the redesignation of the Tennessee portion of the Chattanooga Area. See *id.* at 68,253.

In any future proceedings that involve the same relevant facts and arise within the Sixth Circuit, EPA intends to apply the same legal analysis that it relied upon in the Chattanooga redesignation proceeding. It also intends to apply that analysis to any further proceedings with respect to petitioner's effort to obtain redesignation of the Cincinnati Area. Although petitioner submitted an implementation plan revision in 2008 that included an analysis of RACM, EPA never acted on that submission, and petitioner withdrew it after EPA granted its redesignation request in 2013. See Letter from Scott J. Nally, Director, Ohio EPA, to Susan Hedman, Regional Administrator, U.S. EPA, (Sept. 27, 2013).[2] Petitioner is free to resubmit its RACM analysis to EPA for approval as part of its implementation plan. EPA would evaluate petitioner's request for approval of that plan—and for redesignation of the Cincinnati Area—using the same legal principles that it applied in the Chattanooga proceeding.

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[2] Petitioner is thus mistaken when it asserts that "all of Ohio's plans . . . were fully approved [by EPA]." Pet. 26.

c. For the reasons set forth above, although the court of appeals' decision reflects a mistaken analysis of Section 7407(d)(3)(E)(ii), the decision is unlikely to have a significant practical impact on EPA's implementation of the Clean Air Act. Although some States will be required to adopt and submit RACM and RACT provisions in their implementation plans even when the areas in question are already attaining the NAAQS, the fact of attainment will necessarily mean that no additional measures that qualify as RACM or RACT exist or must be imposed. The court's decision will create some additional administrative costs that a sounder legal analysis could have avoided, but those costs are unlikely to be significant and do not provide a compelling basis for further review in this case.

Petitioner's differing assessment of the significance of this case rests on an overly broad interpretation of the decision below. Most importantly, petitioner's second question presented is premised on its view that the court of appeals' decision "compel[s] States to impose measures unnecessary to meet the relevant air-quality standards." Pet. i; see Pet. 18-30, 35. But as explained in greater detail above, the court's decision did not address the validity of EPA's longstanding view that RACM and RACT do not encompass measures that are not necessary to attain the relevant NAAQS. See pp. 2-3, *supra*. On EPA's understanding of the decision, petitioner's second question presented therefore is not actually implicated in this case.

Petitioner is also wrong in reading the court of appeals' interpretation of Section 7407(d)(3)(E)(ii)'s phrase "applicable implementation plan" to require a State seeking redesignation "to continue implementing *all* nonattainment-plan mandates." Pet. i (empha-

sis added); see Pet. 17-18, 24. In fact, the decision below is narrowly tailored to Section 7502(c)(1)'s RACM requirement, and the court's analysis reflects the premise that this provision is "functionally identical" to similar statutory language that the court had previously construed. Pet. App. 26a (discussing interpretation of 42 U.S.C. 7511a(b)(2) set forth in *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001)). Although the decision below may influence the interpretation of any other Clean Air Act provisions that the Sixth Circuit comes to regard as analogous to the ones it has already construed, any such impact should be assessed in future cases on a provision-by-provision basis, if and when it becomes necessary to do so. EPA does not read the court's decision to have any direct application outside the context of Sections 7407(d)(3)(E)(ii) and 7502(c)(1).

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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